

Remarks

Claims 1-21 are pending. Claims 9-20 have been elected for prosecution in the present application. Claims 1-8 and 21 have been withdrawn by the examiner.

Art Rejection

Claims 9, 11-17 and 19-20 have been rejected under 35 USC 103(a) as unpatentable over U.S. Patent Application No. 2004/0071825 (Lockwood). Applicants respectfully traverse this rejection.

Lockwood discloses agglomerated granular protein rich nutritional supplements comprising a mixture of: 13 to 100 percent by weight edible nutritional food proteins; 0 to 57 percent by weight edible carbohydrates; 0 to 10 percent by weight edible fats; 0 to 15 percent by weight edible dietary vitamins and minerals; 0 to 10 percent by weight edible plant extracts, and up to 4 percent by weight of chondroitin sulfate, where the nutritional supplement is agglomerated and granulated in an oral unit dosage form that is directly adsorbable onto the tongue or rapidly dissolvable in an aqueous liquid (see Lockwood, Abstract).

Applicants submit that the examiner has failed to establish the burden of proof to set forth a prima facie obviousness rejection. Lockwood discloses a myriad of nutritional ingredients, but provides no suggestion to assemble ingredients to which any of the present claims are limited. Simply reciting a reference that includes so many different ingredients, akin to reciting a chemical dictionary, doesn't then render any combination thereof as prima facie obvious.

Applicants, therefore, respectfully request withdrawal of this rejection.

Claims 9-20 have been rejected under 35 USC 103(a) as being unpatentable over US Patent Application No. 2004/0071825 (Lockwood) in view of US Patent 6,103,764 (Nissen). Applicants respectfully traverse this rejection.

Nissen discloses a method for increasing the aerobic capacity of muscle of an animal, the method comprising administering a dose of HMB to the animal such that the aerobic capacity is increased without a substantial increase in the mass of the muscle (see Nissen, Abstract). Lockwood is described above.

Nissen, like Lockwood, fails to disclose any formulation containing carnitine, carnitine and HMB, or any other combination to which the present claims are directed. In short, merely citing a combination of references that include a myriad listing of nutritional ingredients doesn't then make every combination thereof prima facie obvious.

Applicants, therefore, respectfully request withdrawal of this rejection.

Conclusion

In view of foregoing remarks, Applicants respectfully request reconsideration of this application, withdrawal of the current rejections, and allowance of elected claims 9-20.

Respectfully submitted,

By /William J. Winter/
William J. Winter
Attorney for Applicant
Registration No. 36,060

Abbott Laboratories
Department 108140/S1
625 Cleveland Avenue
Columbus, OH 43215-1724
Phone (614) 624-5686;
Fax. (614) 624-3074